

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RICHARD P., by and for R.P.,  
and DENISE L., by and for K.L.,  
Plaintiffs

v. CIVIL ACTION NO. 03-390 ERIE

SCHOOL DISTRICT OF THE CITY OF  
ERIE, PENNSYLVANIA, et al.,  
Defendants

JURY TRIAL - DAY NO. 5  
(PLAINTIFFS' CLOSING ARGUMENT)

Proceedings held before the HONORABLE  
  
SEAN J. McLAUGHLIN, U.S. District Judge,  
  
in Courtroom C, U.S. Courthouse, Erie,  
  
Pennsylvania, on Monday, January 30, 2006.

APPEARANCES:

EDWARD A. OLDS, Esquire, and CAROLYN  
SPICER RUSS, Esquire, appearing on behalf  
of the Plaintiffs.

Ronald J. Bench, RMR - Official Court Reporter

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1 PROCEEDINGS

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3 (Whereupon, the following Excerpt of Jury Trial  
4 proceedings occurred on Monday, January 30, 2006, in  
5 Courtroom C.)

6

7 THE COURT: All right, Mr. Olds.

8 MR. OLDS: Thank you, your Honor. Good morning.

9 I want to thank you for your attention during this trial. I'm

10 sure that there's nothing I can say that will describe how

11 important this case is to all the parties. I think you guys

12 were commendable in your attention that you paid to the

13 evidence. I also think that you appreciate the importance and

14 the role that you are serving here in terms of deciding this

15 dispute between my clients and the Erie School District.

16 When Ms. Woods was on the stand, she started off

17 early in her testimony saying, you know, the most important

18 three words in the school is I need help. And she went to

19 great length about that. She had another three-word saying

20 that she mentioned on the stand, which was life is tough. And

21 I think that that three-word saying sort of embodies what the

22 school district's defense here is to this case, you know, life

23 is tough, what happened to Kristina and Rachel, that sort of is

24 tough, but there's nothing we could do about it.

25 You have to bring, in terms of deciding this case,

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1 you guys have to bring a critical intelligence, that is

2 listening to the evidence, listening to what people said,

3 reviewing the evidence, that is the documentary evidence and

4 sort of do a little detective work and get to the bottom of

5 what happened. And you have to use your common sense in terms

6 of figuring out what happened.

7 Because really what we all know, and there is no

8 dispute, that Kristina and Rachel were raped on December 19th.

9 Then what gives that dispute is whether and to what extent the

10 school district became actually aware that there was sexual

11 harassment. Whether the sexual harassment was severe and

12 pervasive and whether Kristina, whether the school district was

13 deliberately indifferent to that sexual harassment. Mr. Marnen

14 has ably argued that you couldn't believe that Ms. Cappabianca

15 would hear that the rape occurred and do nothing. I mean, he

16 said that would have to strain your credibility, right, you

17 couldn't believe that. But what I think, I'm going to take you

18 through is a series of sort of discreet pieces of evidence that

19 will show you why this happened and it didn't happen just

20 because life is tough. It happened because the school district

21 was deliberately indifferent to information that should have

22 tipped it off that something terrible had happened to these

23 girls and something terrible was going on with these girls.

24 The first thing is Ms. Cappabianca -- why don't we

25 look at her deposition testimony. Ms. Cappabianca admitted,

1 and this is in court, she admitted that -- it's right here, she

2 admitted that she had information about sexual activity between  
3 Kristina, age 12, and Charles Bibbs, age 14, who has a -- this  
4 is in the exhibits. He has discipline history between  
5 September and December this thick. You heard that Charles had  
6 been kicked out of school, that he had been there the year  
7 before because of his bad behavior. So we know that Ms.  
8 Cappabianca knew that. There is evidence, I don't think we  
9 need to play it, okay, there is evidence, although, why don't  
10 we show it on the exhibit -- there is evidence that Charles  
11 Bibbs, when Ms. Cappabianca -- and there is no dispute about  
12 that, she went to Kristina and she went to Charles.

13 Ms. Cappabianca, when she went to Charles, he  
14 testified like what's going on, I'm hearing this like serious  
15 stuff, like you're having oral sex. She asked me this. That  
16 was at the end of the deposition of his testimony. And really  
17 he denied that, right, the great sneak denied it.

18 But there is evidence that Ms. Cappabianca -- in  
19 this courtroom they say, well, we were aware of sexual activity  
20 between Kristina and Charles, we were aware of that. We  
21 thought it might be holding hands or kissing. But we were  
22 aware of that. And so when we went to Kristina and Charles, we  
23 didn't say was there sexual activity or, you know, we just sort

24 of kept it general, we didn't ask the question. But Charles

25 Bibbs said Ms. Cappabianca did ask him the question. That she

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1 asked him what's this I hear about oral sex. Now, he denied

2 it. And that gets into sort of the meat of the case, as far as

3 I'm concerned.

4 Now, when Ms. Cappabianca, I guess maybe what I'd

5 like to do is address this question now. Why -- Mr. Marnen

6 sort of asked this question, why would this happen. Come on,

7 jury, you're not going to believe that Ms. Cappabianca would

8 ignore information like this. You just can't believe this,

9 it's too incredible to believe. But I think that if you

10 consider certain pieces of evidence, you'll see what is, in

11 essence, a pattern of evidence that was generated during this

12 three-week period, four-week period, that Ms. Cappabianca and

13 Ms. Woods knew that something was going on.

14 But they assumed, without doing any investigation,

15 they assumed that it was voluntary and consensual. That

16 Kristina and Rachel were engaged in voluntary consensual sex

17 with Charles Bibbs and perhaps others and, therefore, they

18 didn't see it as an assault, as harassment and, therefore, they  
19 didn't act on it. Therefore, they had information about which  
20 they were deliberately indifferent.

21 When Ms. Cappabianca was on the stand, she said  
22 something that I thought was just amazingly incredible. She  
23 said that when she questioned Kristina, that Kristina had  
24 lipstick on, makeup, I think she said Kristina looked darling.  
25 And then the second day she was on the stand, when Mr. Marnen

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1 was questioning her, she embellished on that even further, she  
2 said well, after I talked to Kristina, I walked her down to  
3 PASS, and Kristina sat right down next to, darling little  
4 Kristina, cute as a pin, sat right down next to Charles.  
5 And that's when I asked Charles, well, what's this I hear you  
6 about you and Kristina. Charles said well, she just likes me,  
7 Ms. Cap. Charles said that he didn't even know Kristina before  
8 or after this rape.

9 Now, think about this. Is that what Ms. Cappabianca  
10 wanted you to believe. We know why she said it. She said it  
11 because well, ladies and gentlemen of the jury, here I am, I'm

12 a vice principal in this school, there's a lot of stuff going  
13 on and I have to respond to appearances. And I heard this  
14 stuff about sexual activities between Charles and Kristina, and  
15 I asked Kristina, she said something happened and the  
16 appearance was, well, nothing really happened. And, in fact,  
17 ladies and gentlemen of the jury, when I took Kristina to PASS  
18 that night, she sat right next to Charles Bibbs. Do you  
19 believe, now this is where your critical facilities have to  
20 come in, do you believe that Kristina, who was raped by Charles  
21 Bibbs the night before, sat next to him in PASS that next day  
22 or do you think that she was terrified.

23 Now, I submit that it doesn't make sense what Ms.  
24 Cappabianca said. But I think, excuse me, I think it shows you  
25 something about her perception -- her perception is that

1 Kristina, Charles, she says is developing an attraction. Her  
2 perception back then was that Kristina liked Charles, and that  
3 there would be, maybe these are bad kids, but there would be  
4 sexual activity between a 12-year-old girl, mental age eight,  
5 and a 14-year-old boy, with a discipline record like this, that

6 was somehow consensual.

7 Now, when -- and I think that if this is one of  
8 several incidents that I'm going to discuss, but gives you, the  
9 jury, in your critical incites that you have to bring. You're  
10 not just listening to them and accepting their words at face  
11 value. You have to say are these people, does it make sense  
12 what they're saying, do they have a reason maybe to shade  
13 things and embellish things. And I think, it was amazing that  
14 Ms. Cappabianca would expect you to think that Kristina would  
15 sit next to Charles. It shows that she thinks that there is  
16 something going on between Charles and Kristina, not a rape,  
17 but a mutual attraction.

18 Now, but this is the next piece of evidence supports  
19 this, supports my argument because in her talk with Kristina,  
20 Ms. Cappabianca said I asked her did something happen, and  
21 Kristina said yes. And what did Ms. Cappabianca say next. Did  
22 she say, Kristina, what happened. Kristina, would you like to  
23 talk to somebody about what happened. Kristina, were you hurt.  
24 No, she didn't say any of those things. She said, Kristina,  
25 you know, that's what people do when they're grown up and in

1 love and they care about each other. She immediately jumped to  
2 the conclusion that Kristina had engaged in something voluntary  
3 with Charles Bibbs. Now, if you immediately jump to that  
4 conclusion, that a 12-year-old girl, mental age eight, is  
5 voluntarily engaged in sexual activity with a 14-year-old boy,  
6 then you're not going to bring, as Ms. Cappabianca, you're not  
7 going to bring any concern at all about what that girl is  
8 doing. Oh, that's her choice, I can't interfere with her  
9 choice. I'm not going ask her whether it was voluntary,  
10 whether she was coerced, whether this kid, who has a record  
11 like this, (indicating), and Kristina, is cute and slow, I'm  
12 not going to ask her if there's something she wants to talk to  
13 you about. I'm just going to warn her. In fact, she sort of  
14 condemned her and says, Kristina, what you're really doing is  
15 wrong. What you're doing is wrong because you should wait  
16 until you're an adult to do these kinds of things.

17 Now, imagine the impact. Let's just assume that Ms.  
18 Cappabianca's story is right, that she walked with Kristina  
19 down to PASS and she sat, she's in front of Kristina, she said  
20 to Charles what's this I hear about you and Kristina doing

21 something. And Charles denied it. What does that say to  
22 Kristina when Ms. Cappabianca walks out of the room and leaves  
23 her there with Charles. It says, Kristina, age 12, mental age  
24 eight, you're on your own with this kid. I'm not going to  
25 interfere, I'm not going to take any steps to make sure that

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1 you're protected. I just don't care, you better be careful.  
2 You better not be doing this stuff that you've been doing.  
3 Well, that's one and two.  
4 Let's go to three. I want to talk about Ms.  
5 Cappabianca's interactions with Rachel and what you'll see is  
6 you'll see this same pattern. That Ms. Cappabianca back then,  
7 in the courtroom they say we were very concerned about this,  
8 but back then they have a different attitude. The evidence  
9 shows that back then they thought these girls were voluntarily  
10 engaging in this activity. In the meeting with Rachel on  
11 Friday, January 4th, '02, when Ms. Cappabianca called Rachel's  
12 dad, that happened after Rachel -- that happened after Rachel  
13 was in music class and said tell these boys to quit asking me  
14 to suck dick, I can't avoid using that language. That's what

15 Rachel said.

16 So Ms. Cappabianca finds Rachel in her room about  
17 that and we heard, we had Rachel's diary -- do you want to put  
18 that page up -- Ms. Cappabianca says that this conversation  
19 didn't occur. But Rachel's diary talks about it. Rachel's  
20 diary says it sort of happened on, I'm going to read it for  
21 you, we tried to decipher it. "Every day and every night I'm  
22 always awake thinking about what happened and how I felt and  
23 what I remember. It made me more sad than I was" ... word  
24 undecipherable ... "when Ms. Cap wouldn't do ... word  
25 undecipherable, "what happened, and my dad yelled at me when

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1 Ms. Cap wanted me to call home about saying sucking dick and  
2 that hurt my feelings so bad. And I really started to cry and  
3 I went out of Ms. Cap's and slammed her door. I couldn't stop  
4 crying, then I got five day PASS and I got harassed and raped  
5 after PASS."

6 You know it's our theory that Ms. Cappabianca  
7 questioned Kristina and said to her do you want to talk to me,  
8 Kristina, is there someone that I can take you to to talk with

9 at the school. She could have headed off all of this stuff.

10 But, so Ms. Cappabianca says well, that didn't happen.

11 Both Rachel and her father testified that there was  
12 an instance where that happened. Rachel's diary, written  
13 sometime around those events, talks about that. We're dealing  
14 with 12-year-old girls, who both of them have expressive  
15 problems. We're dealing with 12-year-old girls who have been  
16 raped. Now, they might not be able to say to Ms. Cappabianca,  
17 because they might not have the words to say I was raped. It  
18 might not be in their vocabulary. Think about 12-year-olds,  
19 think about these were 7th graders, but they were both, both  
20 had learning disabilities. Think about a 12-year-old's ability  
21 to describe sexual occurrences.

22 But, anyway, so Ms. Cappabianca had this information  
23 and what's her response. Well, her response is Rachel must be  
24 bad. Rachel must be bad. I'm not going to try to get the  
25 bottom of it, Rachel must be bad and I'm going to punish her.

1 In fact, the evidence shows that this happened on Friday, 1/4,  
2 and the evidence shows in fact that Rachel was in PASS the next

3 Monday, the next Monday, the next Tuesday, and the next

4 Wednesday, and that was her last day of school. So she was

5 punished for that.

6 That item of evidence, Rachel's diary, the testimony

7 of Rachel and Richard, tie these things together and show that

8 in fact there was a conversation that Ms. Cappabianca wants to

9 disavow. You know why she wants to disavow it, she wants you

10 to believe that as soon as she had any signs of it, she was on

11 top of it like that. Well, she had signs of it, but she

12 mentally, mentally, Mr. Marnen asked why did it happen. It

13 happened because mentally Ms. Cappabianca and Ms. Woods didn't

14 see Rachel and Kristina as victims, they saw them as

15 accomplices.

16 Let's talk about this, while this PASS record is up.

17 Mr. Marnen talked about, well, you know, Ms. Cappabianca and

18 Ms. Woods jumped right on this as soon as Rachel had her

19 outburst. Well, that was the 9th, and Rachel is in PASS again,

20 after school detention. And, in fact, Charles Bibbs is in PASS

21 that day. Now, think about it. If you thought that a young

22 girl, a 12-year-old girl had been raped, and they say that they

23 are investigating and they know all about it on the 9th, would

24 you send her to PASS with her rapist, or is it more logical to

25 assume that, well, we think that Rachel back then, we think

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1 that Rachel and Charles are messing around after school and it  
2 won't matter if they're in PASS together because they're both  
3 in this together. There isn't a victim and a perpetrator,  
4 there's just two accomplices.

5 Let's talk about Robin Johnson. The testimony of  
6 Robin Johnson and her daughter present a problem to the school  
7 district because, and may take a while to get here, I'm  
8 thinking of the digression here.

9 Ms. Cappabianca doesn't admit that she met with  
10 Robin Johnson and her daughter on that day, although, Mr.  
11 Polancy recalls seeing them, and Ms. Johnson recalls her  
12 daughter, saying there's Rachel, that's the girl that Ms.  
13 Cappabianca was talking about. But you know what, we don't  
14 have any records about what the school district did in terms of  
15 this supposed investigation that it conducted on January 9th  
16 and January 10th.

17 And the judge is going to give you an instruction  
18 that if you think that the school district, as the officials,

19 Ms. Cappabianca and Ms. Woods, have destroyed those records or  
20 otherwise made them not available, you could draw inferences  
21 from that. You're not required to, but you could draw  
22 inferences from that, that there might be something in those  
23 records that would show that the school district, it would be  
24 negative to the school district.

25 Now, here is what we know happened on the 9th and

13

1 10th. The school district was talking to lots of kids and  
2 their parents. Now, Mr. Marnen says well, are you saying that  
3 we would just call in this woman and talk to her. Well, they  
4 called in lots of people. They testified to that. They named  
5 the people that they called in. And it's possible that their  
6 records might show that they also called in Robin Johnson  
7 because well, how would they know whether Toni Northrop had any  
8 information about what happened between Charles and Rachel and  
9 Charles and Kristina, unless she were called in with her  
10 mother, like all these other kids with their mothers, and asked  
11 does your daughter not knowing anything about this.

12 So, now, the other things that you need to think

13 about, in terms of Robin and Toni, is that they have really no  
14 ax to grind against the school district. Mr. Marnen wants you  
15 to think that, I don't know, I don't want to take words out of  
16 his mouth, somehow they're despicable or they're less than  
17 honorable because they come and talk about this. But they're  
18 not parties to this case. If they have an ax to grind, we  
19 don't know about it because it wasn't brought up here. So you  
20 have to ask yourselves would two people, and you saw them,  
21 Robin and Toni, were these two people, would these two people  
22 come into this court and perjure themselves. It's not just  
23 like maybe a fuzzy recollection about seeing or they can't  
24 recall whether it was Monday or Tuesday. Actually perjure  
25 themselves, make up a story that was absolutely not true,

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1 absolutely false. You saw them and ultimately you have to make  
2 that decision.

3 But I think that you have to ask yourselves why  
4 would they perjure themselves. Well, obviously, what this  
5 evidence shows is that this theory that the plaintiffs have  
6 about why the school district didn't do anything, Ms.

7 Cappabianca is telling Robin Johnson and her daughter, well,  
8 Rachel is pretty bad. You know, she's acting like a little  
9 whore, that is what Ms. Johnson testified to. She's in the  
10 basement engaging in oral sex. And Ms. Johnson said that Ms.  
11 Cappabianca used the more colloquial term, I think she said  
12 blow jobs. And while her daughter couldn't bring herself to  
13 say it, couldn't use the words that Ms. Cappabianca used, she  
14 indicated that they were dirty.

15 Now, that's another indication, even during the  
16 course of this investigation, this happened on the 10th of  
17 January, the day that the school district is meeting with  
18 Rachel and her dad, Ms. Cappabianca is not at that meeting,  
19 she's meeting with other parents. Ms. Woods and Chris Ruhl are  
20 meeting with Rachel and her dad. And so it's again as late as  
21 the 10th, as late as the 10th of January, the school district,  
22 their mind set is well, these girls are bad. And so we're not  
23 being deliberately indifferent, we're trying to get to the  
24 bottom of this.

25 Let's go to number five. Ms. Woods talking to

1 Richard Polancy and Rachel. Now, I heard her description of  
2 that meeting, this is another place where I think that you need  
3 to exercise your critical judgment about what's going on. On  
4 the stand here today, I mean this week, last week, when she's  
5 talking to you guys, who you will be her, in essence, her  
6 judge, the judge gives the legal instructions, but you guys are  
7 going to be in the position of was she indifferent or did she  
8 not do her duty, was she's talking to you guys, of course,  
9 she's going to say well, I did everything I could, we jumped  
10 right on this, of course she's going to say that. Of course,  
11 she's going to say that.

12 Let's see how she structured this meeting. She has  
13 Rachel and her father and Chris Ruhl in this little room. And  
14 she says that she asks Rachel, she looked at Rachel and said,  
15 Rachel, tell your dad what happened. Now, is that how you have  
16 a little 12-year-old, 13-year-old girl say that she's been  
17 raped. Or is that how you have a 13-year-old girl confess to  
18 doing something wrong. I think it's the latter. I think that  
19 Ms. Woods had Rachel in her office to confess to her dad. Dad,  
20 I've been engaging in oral sex in the basement. I've had all  
21 the boys in the school, I've been -- not all the boys, I'm

22 exaggerating, I've been engaging in oral sex. If Ms. Woods had  
23 thought, had believed that Rachel was raped on that date, would  
24 she put a 13-year-old girl, tell your dad what happened. Would  
25 she do it, no she wouldn't. That's not how she would do it.

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1 She would have had Mr. Polancy in her office, we  
2 just discovered your daughter was raped, you better get her to  
3 the doctor right away. But that's not what happened. I think  
4 that that also shows this mind set.

5 It's not that I'm saying that Ms. Cappabianca, Ms.  
6 Woods are awful people. But what we're here about today is,  
7 and I'm not saying that. What we're here about today, they  
8 could have done something sooner than they did to stop what  
9 ultimately happened to Rachel and Kristina. That's what we're  
10 here about. And what kept them from doing that, what kept them  
11 from helping these girls was sort of a prejudice.

12 They weren't even aware of it, it was subconscious.  
13 It's subconscious because Ms. Cappabianca can sit on this stand  
14 and expect you to believe that Rachel or, excuse me, Kristina  
15 would sit next to Charles. It was subconscious, they guys are

16 involved with these boys and we're getting to the bottom of it,

17 but we know that -- let's look at that January 10th letter.

18 We know there's been some kids, the first paragraph of that

19 letter, we know there's some kids who have been engaging in

20 defiance, she used the word defiance, I don't know what word

21 she meant there. Defiant sexual matter behavior. And she

22 included Kristina and Rachel among the kids using the defiant,

23 among the kids involved in that sex.

24 Now, you know what, I'm not going to dispute that

25 later on that day or the next day, that was actually the

17

1 testimony, the morning of the 11th, Ms. Woods did call the

2 police. She did call the police. But Mr. Polancy testified

3 that on the 10th, he said I'm going to call the police. Have

4 you called the police, I'm going to go call the police. When

5 he heard that his, when he heard these accusations about his

6 daughter, he said that's not my daughter, have you called the

7 police. Well, no, they hadn't called the police because they

8 were working under the assumption that Rachel and Kristina were

9 bad, and were involved in this sexual activity and they hadn't

10 called the police yet. When they called the police, and this  
11 is sort of akin to the fact that we don't have any records, so  
12 we don't know who they met with or what was said, when they  
13 called the police, I went over this with Ms. Woods, they said  
14 we found out about this on January 9th. And I think that that  
15 is the beginning of a coverup, as soon as they went outside the  
16 school they decided that they had to cover up what had happened  
17 for the last three weeks. Because if you're an official, if  
18 you have a responsibility to shepherd the kids in this school  
19 and you have an idea that a crime has happened, you're going  
20 to, obviously, when you call the police, you're going to give  
21 them the accurate information, right.

22 Well, both of them knew that there had been  
23 information, student rumors, that Kristina, at a minimum, they  
24 knew that before Christmas that there had been sexual activity  
25 between Charles and Kristina and they related all this stuff

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1 back to January 19th, excuse me, December 19th, the day after,  
2 the day before Ms. Cappabianca talked to Kristina and Rachel.  
3 But they didn't want to tell the police, you know what, we had

4 information about this three weeks ago. Because maybe the  
5 police would start asking them questions about what, well, you  
6 had this information three weeks ago, what did you do. Did you  
7 talk to the girls, did you ever ask the girls whether they were  
8 raped. No, they didn't want the police to know that. And so  
9 the police never learned that. I think -- the thing that you  
10 have to decide is whether, if Ms. Cappabianca and Ms. Woods had  
11 listened to the information that was coming to them from these  
12 girls, and listened to them, not with the pre-disposition to  
13 judge the girls, but listened to them as, I think Ms. Woods  
14 used the term discriminating, listening to 12-year-old little  
15 girls, trying to talk about something bad that happened to them  
16 and not be deliberately indifferent to their attempts to talk  
17 about something that happened to them, things would have been  
18 different.

19 Rachel wouldn't have had that sexual assault, that  
20 second sexual assault that occurred on January 7th, the day  
21 that Ms. Long called up Ms. Cappabianca and said, you know, I  
22 talked to my daughter who's in the hospital and she says that  
23 she was raped before Christmas. Ms. Cappabianca didn't jump on  
24 that information and later that day after PASS, where Rachel  
25 had been sent, after PASS Rachel was assaulted again. And

1 Rachel was assaulted in the school again. And after that first  
2 conversation with Kristina, both Kristina and Rachel were  
3 victimized by what happened by the other kids torturing them  
4 and tormenting them. You heard Rachel say it was constant,  
5 boys were approaching her and saying will you give us oral sex.

6 I want to talk a little bit about damages. I don't  
7 want to go on too long because I just don't. But at the  
8 beginning of the case I said that there were going to be things  
9 in this case that were so awful that your brain was going to  
10 say this couldn't happen, I reject it, nothing that bad could  
11 happen. I think the evidence has supported that.

12 Imagine Ms. Cappabianca, after Charles Bibbs denied  
13 hurting Kristina, walking out of the room leaving Kristina  
14 there with Charles. Imagine that 12-year-old Kristina.  
15 Imagine Rachel, who has been raped, overhearing Ms. Cappabianca  
16 described to her dad as a bad girl and she needs discipline.  
17 Imagine Rachel talking to Toni Northrop, after Toni Northrop  
18 and her mother had the conversation with Ms. Cappabianca, and  
19 Toni Northrop saying I can't play with you anymore because my

20 mother, Ms. Cappabianca said you're giving oral sex, giving  
21 head, that's the way she said it, giving head in the school, I  
22 can't play with you anymore. Given what happened to Rachel and  
23 Kristina, imagine them being in school, imagine Kristina having  
24 tried to help Ms. Cappabianca what happened, and then being in  
25 school with Charles Bibbs, this guy she was totally afraid of.

20

1 I sort of resent Mr. Marnen trying to incite some  
2 kind of regional prejudice against Dr. Schachner saying, well,  
3 he came from Pittsburgh, came up here to Erie and told us  
4 everything we did was wrong up here. Well, what Dr. Schachner  
5 said, and I don't think that you should bring, you should  
6 impose regional prejudice on him, I'm from Pittsburgh myself,  
7 on us.

8 But Dr. Schachner said that these kids suffered from  
9 post-traumatic stress syndrome and that you have to jump on it  
10 or else it gets worse. Every time they are encountered in  
11 school they relive that, they relive that rape. And it didn't  
12 end when they left school. You heard the testimony. You heard  
13 how Rachel was in the hospital for two weeks, on two separate

14 occasions. You heard how Kristina was in the hospital. You  
15 heard how these girls tried to injure themselves, tried to hurt  
16 their parents.

17 Dr. Schachner said, and the judge will instruct you  
18 that the school district isn't responsible for that rape that  
19 happened on December 19th. But what Dr. Schachner said is that  
20 what happened to the girls afterward was like reliving that.  
21 And what happened to the girls when they went to authority  
22 figures, when Kristina went to Ms. Cappabianca said something  
23 happened to me.

24 When Rachel tried to tell Ms. Cappabianca about what  
25 happened, help me. When they were rejected, that these two

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1 12-year-old little girls, that destroyed their trust in adults.  
2 I mean Ms. Cappabianca was there. Kristina saw Ms. Cappabianca  
3 as someone who might protect her. If you can think of  
4 something so vital, so vital that you're trying to get out, Dr.  
5 Schachner said little girls don't talk about when they're  
6 raped, they can't, they don't want to, they feel guilty, they  
7 don't want to talk about it. But here they tried to talk about

8 it, Ms. Cappabianca ignored them, all of a sudden their whole  
9 world is upside down. These adults, if you're 12-year-olds,  
10 these adults aren't going to protect you anymore. And, in  
11 fact, these adults are going to say you're bad for being raped.

12 What does that do to their mental, what does that do  
13 to their mental view of these girls. What it does is it was  
14 like they went to hell. It was like they went to hell after  
15 that. And they were in juvenile trouble, they are arrested.  
16 Kristina was arrested. They were institutionalized. This is  
17 like, it's not the rape, the rape is bad. It's like having a  
18 cancer and you get worse and worse and worse and worse, and  
19 they got sicker and sicker and sicker.

20 And they testified here, and you saw that Rachel and  
21 Kristina had some difficulty. Rachel appears to be a little  
22 better. But this is five years after this happened, this is  
23 five years after this happened.

24 Mr. Marnen was right. He started off his opening  
25 saying that these guys lost their childhood, Rachel and

1 Kristina lost their childhood. And you can't -- the judge is

2 going to instruct you on the damages, in awarding damages.

3 There is no, you can't comprehend what money can replace that.

4 I'm sure that if Rachel or Kristina could ask you to

5 do something, they would say make Ms. Cap listen to me, make

6 Ms. Cap listen to me when I tried to tell her that I was raped.

7 But we can't go back to that. We can't go back to that point.

8 If we could go, we wouldn't be here, we can't go back to that

9 point. You couldn't put Rachel and Kristina back to that

10 point.

11 But you should think about the injuries they

12 suffered and award them, because you can't put them back to

13 where they were, award them damages that you think will

14 compensate them for what they've suffered. Thank you.

15 THE COURT: Members of the jury, we're going to take

16 a recess. And then after the recess, I'm going to come out and

17 give you my charge.

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19 (Whereupon, Plaintiffs' closing argument was

20 concluded.)

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## 1 CERTIFICATE

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5 I, Ronald J. Bench, certify that the foregoing is a

6 correct transcript from the record of proceedings in the

7 above-entitled matter.

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12 Ronald J. Bench

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